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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,043	02/03/2004	James R. Shaw	060950-0089-US	3897
24341	7590	12/11/2006	EXAMINER	
MORGAN, LEWIS & BOCKIUS, LLP. 2 PALO ALTO SQUARE 3000 EL CAMINO REAL PALO ALTO, CA 94306			LEE, CLOUD K	
			ART UNIT	PAPER NUMBER
			3753	

DATE MAILED: 12/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/772,043

Applicant(s)

SHAW ET AL.

Examiner

Cloud K. Lee

Art Unit

3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-16, 19 and 20 is/are rejected.
- 7) ☒ Claim(s) 8-9, 17-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/22/06</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-2, 4-5, 7, 10-13, 15-16, 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duckworth Jr (US Patent No. 4,098,427) in view of Erben (US Patent No. 6,736,353).

Duckworth discloses a lavatory drain port comprising a housing (26, 40, 42 and 84 together), a waste drain valve coupled to the housing (see figure 2) wherein the waste valve comprising an outlet (122) within the housing, an inlet (the right portion of figure 3 is collected to a waste collection tank), a service panel door pivotally coupled to the housing (figure 3 element 18) wherein the inner surface of the service door mates with the outlet to seal the outlet

Art Unit: 3753

when the service panel door is in a closed position (see figure 2). The inner surface of the service door is considered outer cap which is incorporated into the service panel door and is coupled to the underside of the service panel door (see figures 2 and 3) because this is how applicant is using these terms. Duckworth fails to disclose an outer surface configured to substantially match an outer contour of an aircraft's skin.

Erben discloses a door of an aircraft comprising an outer surface configured to substantially match an outer contour of an aircraft's skin (see abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided an outer surface configured to substantially match an outer contour of an aircraft's skin in order to reduce the air flow resistance during flight operation as taught by Erben (see abstract).

Duckworth also discloses a housing comprises a substantially tubular side wall and a base near one end of the side wall (see figure 1 and 2). The housing further includes waste drain valve components with the housing consisting of a handle (24), a lever (102), a hinge (60), a locking mechanism (70), a spring (118), a clasp (22), and fasteners (30). The housing is configured and dimensioned such that service panel door cannot close and lock if at least one of the waste drain valve components is not closed and locked (see figures 2 and 3, the service panel door cannot close when door 12 is in an open position) and wherein the waste drain valve further comprises an inner door pivotally mounted within the outlet (see figure 3 element 12). The housing and the waste drain valve are manufactured as a single unit (see figures 1-3):

Art Unit: 3753

4. Claims 3, 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duckworth Jr (US Patent No. 4,098,427) in view of Erben (US Patent No. 6,736,353) as applied to claims 1 and 13 above, and further in view of Saville et al (US Patent No. 5,392,826).

The modified Duckworth substantially shows the claimed subject matter (see paragraph 3), but Duckworth fails to disclose a rinse/fill valve and handle assembly coupled to the housing at least partially within the base.

Saville et al discloses a rinse/fill valve (22) and handle assembly (20) coupled to the housing within the base (10). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a rinse/fill valve and handle assembly coupled to the housing within the base in order to flush and recharge the tank as taught by Saville (Col 7 line 46-49).

***Allowable Subject Matter***

5. Claims 8-9 and 17-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record does not disclose or suggest the distal portion of the handle is positioned at a 7 to 8 o'clock position relative to the aft portion of the aircraft being at 9 o'clock, in combination with the other limitations set forth in the claims.

***Response to Arguments***

6. Applicant's arguments filed 10/23/06 have been fully considered but they are not persuasive.

In response to applicant's argument that Duckworth fails to disclose a housing, it is noted that the structure 26, 40, 42 and 84 all together are considered the housing of the waste disposal service panel assembly.

In response to applicant's argument that Duckworth fails to disclose an outlet, the structure 112 is being considered the outlet of the waste disposal service panel. Even though Duckworth discloses "an annular rim 122", it is reasonable to consider the structure 112 is the outlet because 112 is functionally and structurally equivalent to an outlet as disclosed in applicant's application.

In response to applicant's argument that Erben is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Duckworth and Erben are in the same field of applicant's endeavor because they are both doors of an aircraft. Furthermore, Erben is reasonably pertinent to the particular problem with which the applicant was concerned (to reduce the air flow resistance arising during flight operation).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching,

Art Unit: 3753

suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Erben provides objective evidence to support combining the Duckworth and Erben, that is in order to reduce the air flow resistance arising during flight operation.

In response to applicant's argument that the housing and the waste drain valve are manufactured as a single unit, please noted, the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product in the prior art, the claim is unpatentable even though the prior product was made by a different process (see MPEP 2113). In this case, Even if Duckworth does not disclose the housing and the waste drain valve are manufactured as a single unit, the patentability of a product does not depend on its method of production. Furthermore, the housing (26, 40, 42 and 84) and waste drain valve (84) are integrated form together (see figure 2), this is reasonably to consider the housing and the waste drain valve are manufactured as a single unit.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cloud K. Lee whose telephone number is (571)272-7206. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Keasel can be reached on (571)272-4929. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CL



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